

b.) Remarks

Claim 1 has been amended to recite the present invention with the specificity required by statute. For the Examiner's convenience, the subject matter of the amendment may be found in the specification from page 17, line 8 to page 18, line 14, in particular page 18, line 12. Accordingly, no new matter has been added.

The Examiner objects to the language of claim 5 for the reasons noted at page 2. In response, claim 5 has above been amended in order to address the Examiner's concerns.

Claims 1-3 and 8-15 stand rejected under 35 U.S.C. §112 for lack of written description and claims 1-3 and 5-15 (sic) for lack of enablement as discussed at pages 3-9 of the Office Action. In response, solely in order to reduce the issues and expedite prosecution, the language of claim 1 has been amended in order to moot the Examiner's objection.

Claims 1-3, 6 and 8-15 remain rejected over the prior art of record. The Examiner's analyses of Nakai are found at pages 14-15 of the Advisory Action. As to that, the Examiner's conclusion that NADH-II dehydrogenase (100% identical to Applicants' SEQ ID NO: 4) isolated from *Corynebacterium glutamicum* (having 27% sequence homology to that of *E. coli*) does not function like *E. coli* NADH-II is incorrect as discussed at pages 8-9 of the December 9, 2010 Amendment. In that regard, to clarify the record Applicants provided a detailed, helpful explanation of high- and low-energy terminal oxidases and their interplay.

In response, the Examiner has neither addressed Applicants' explanation nor provided any relevant teaching of his own. To the contrary, the Examiner's analysis is

based only on the conclusory statement bridging pages 14 and 15. Respectfully submitted,  
this mere reiteration is not at all in conformity with MPEP §§707.07 and 707.07(f).

In any event, those skilled in this art know that protein function is defined by EC number. For instance, the EC numbers of *E. coli* NADH-II and *C. glutamicum* NADH-II are identical, namely EC:1.6.99.3 (*E. coli*: [http://www.genome.jp/dbget-bin/www\\_bget?eco:bl109](http://www.genome.jp/dbget-bin/www_bget?eco:bl109), *C. glutamicum*: [http://www.genome.jp/dbget-bin/www\\_bget?cgb:cg1656](http://www.genome.jp/dbget-bin/www_bget?cgb:cg1656), copies attached). Therefore, it is very well-understood that *C. glutamicum* NADH-II (Applicants' SEQ ID NO:4) has the same respiratory chain pathway function of low energy efficiency as *E. coli* NADH-II despite the low homology between them.

Additionally, contrary to the Examiner's understanding, Molennar does not teach that *C. glutamicum* only expresses type II NADH dehydrogenase. To the contrary, Molennar teach that the type II NADH dehydrogenase is, under particular conditions, the only active membrane-bound NADH dehydrogenase, wherein the specified conditions are as follows:

1. A mutant strain disrupted *ndh* gene is grown on 2 x TY medium
2. Membranes are isolated from the strain
3. NADH dehydrogenase activity is assayed DCPIP or observed

NADH consumption directly by measuring the absorption at 340nm.

However, this is not material to the present invention since those persons ordinarily skilled in the art know that expression of a gene changes according to a culture conditions.

As discussed previously, because Nakai disclose that it is important in *E. coli* to be deficient of NADH-II for the production of amino acids, the present invention in which DNA encoding *C. glutamicum* NADH-II (which has the same function as *E. coli* NADH-II) is amplified, is necessarily unobvious over the prior art.

In view of the foregoing, if the Examiner is aware of some technical reasoning why Applicants' technical analysis is not to be considered persuasive as to the inapplicability of the cited art herein, he is respectfully requested to provide either (i) a reference and explanation in support of his position or (ii) a personal affidavit under MPEP §2144.03.

Entry hereof is earnestly solicited.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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## **Escherichia coli K-12 MG1655; b1109**

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**Corynebacterium glutamicum ATCC 13032 (Bielefeld): cg1656**

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